In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.5577 of 1989.

Date of decision:5-12-2007.

Jagdish Singh and Gurbax Singh.

...Petitioners.

Versus

Punjab State Ware Housing Corporation.

...Respondent.

...

Coram: Hon'ble Mr. Justice K. C. Puri.

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Present: Mr. D. R.Mahajan Advocate for the petitioner.

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K. C. Puri, J.

Judgment.

Jagdish Singh and Gurbax Singh, Work Munishies have challenged the orders OWC/78447 and PWC/78449 dated 2.2.1989 (Annexures P2 and P3)passed by the respondent vide which the services of the petitioners were terminated.

As per case of the petitioners, Jagdish Singh petitioner was appointed as a Work Munshi on 24.4.1987 and petitioner No.2 was appointed as a Work Munshi on 6.4.1987 by the respondent. The petitioners were working for more than 240 days and were,thus, entitled to protection of Section 25N of the Industrial Disputes Act, 1947 (in short the Act). Thousands of workers were employed with the respondent-Corporation

and,therefore, the provisions of Chapter V-B of the Act applied to the respondent-Corporation on account of provisions of Section 25K of the Act. The petitioners were Matriculates and were, thus, eligible for the various posts available with the respondent-Corporation. Vide order dated 4.12.1987, Exhibit P1, the petitioners were served with a notice of termination of their services. The petitioners challenged the said order in Civil Writ petition No.4416 of 1988. A Division Bench on 15.12.1988 passed the following order:-

> " The learned counsel for the parties are agreed that the Writ Petition be disposed of in terms of the order passed in C.W.P.No.502 of 1988 (**Adarsh Kumar Vs. The Punjab State Ware Housing Corporation**) dated 16.5.1988. Accordingly,the order of termination of services of the petitioners would be considered as withdrawn because the provisions of the Industrial Disputes Act, 1947 were not complied with and it will be open to the respondents to pass a fresh order in accordance with law. The petition stands disposed of accordingly. No costs."

Despite the order passed by the High Court in Civil Writ Petition No.4416 of 1988, the petitioners were not allowed to join duty and instead their services were terminated vide order dated 2.2.1989. The petitioners were given one month's pay in lieu of notice under Section 25F (a) of the Act. The Managing Director of the respondent-Corporation was not competent to pass the impugned order. Under the Industrial Disputes Act, 1947 there are two chapters V-A and V-B. As per provisions of Section

25K of the Act, if more than one hundred workmen are working in the establishment, then the provisions of V-B apply to the workmen. The workmen could not be retrenched without payment of compensation under Section 25N. The impugned order is also void in view of Section 25G of the Act which enshrines law of "last come first go". Nirmal Singh and Harbans Singh, residents of village Dharam Garh who have been appointed as Work Munshi vide order dated 13.8.1987 have been retained whereas the services of the petitioners have been terminated. The order of termination is void on that count.

It is also pleaded that the petitioners are entitled to get their services regularized in view of authority reported as **Payara Singh Versus State of Haryana,** 1988(2) Northern Legal Reports, 663.

The respondent filed written statement denying the contents of the petition. It is pleaded that the case of the petitioners is not covered under Section 25N of the Act. The case of the petitioners is covered by Chapter V-A and not by Chapter V-B of the Act. Hence, the provisions of Section 25N do not come into play. As per appointment letter of Jagdish Singh petitioner, his services were liable to be terminated with ten days notice. None of the petitioners joined the duty in view of order passed in Civil Writ Petition No.4416 of 1988. Fresh order in accordance with law was issued by the respondent under Section 25-F of the Act by giving one month's pay and compensation in accordance with law. The Board of Directors in its meeting dated 3.2.1988 vide resolution No.58.3 has specifically resolved that the work load of construction has been reduced and the surplus staff against the projects may be retrenched. The answering respondent was

competent to pass the order in the facts and circumstances of the case. The provisions of Chapter V-A of the Act are applicable to the Corporation and as such the provisions of Section 25N and Chapter V-B of the Act are not attracted. Nirmal Singh and Harbans Singh were recruited against a specific project. The petitioners were appointed against particular construction work. The construction work of project in which the petitioners were working has not been completed. The Hon'ble Supreme Court of India has ordered to maintain status quo till the disposal of Special Leave Petition in respect of **Payara Singh's** case, referred to above.

During the pendency of the present writ petition, Jagdish Singh petitioner sought permission to withdraw the petition with liberty to file a fresh petition and as such the petition of Jagdish Singh was dismissed as withdrawn. Only Gurbax Singh petitioner is before the Court claiming the relief sought in the writ petition.

The counsel for the petitioners made submissions in accordance with the pleadings in the writ petition and has submitted that Chapter V-A is not applicable but Chapter V-B and Section 25N of the Act are attracted. Since Section 25N is applicable, on that count, the order of termination of petitioner Gurbax Singh is liable to be set aside.

It is submitted that the order of termination of petitioner Gurbax Singh is liable to be set aside in view of Section 25-G as Nirmal Singh and Harbans Singh who joined the service with the respondent are still in service. Juniors cannot be retained. There is nothing on the file that Nirmal Singh and Harbans Singh are working on a different project than that of petitioner Gurbax Singh.

It is further submitted that in the respondent-Corporation, thousands of employees are working and as such provisions of Section 25K are applicable. The said provision has not been complied with and as such the order of retrenchment is liable to be set aside and Gurbax Singh petitioner be ordered to be taken in service with full back wages.

I have considered the submissions made by the counsel for the petitioner and have gone through the record.

So far as the facts of the case are concerned, the same are not in dispute. Petitioner Gurbax Singh was appointed as Work Munshi on 6.4.1987 and his services were terminated on 2.2.1989. The letter for termination of his services is Annexure P3.

Learned counsel for the petitioner has submitted that since thousands of employees were working in the respondent-Corporation, as such the provisions of Section 25-O were required to be complied with. The permission of the Government was required before retrenchment of Gurbax Singh petitioner as thousands of employees were working in the Punjab State Ware Housing Corporation.

I have carefully considered the said submission but do not find any force in the same. From the bare reading of Annexure P1, it is revealed that notice regarding termination of services of 16 employees working on a specific project was given. Section 2(cc) of the Act defines the clsoure as under:-

> ""closure" means the permanent closing down of a place of employment or part thereof."

The Parliament in its wisdom has allowed partial closure. There

is nothing on the file that the project in which petitioner Gurbax Singh was working was having more than 100 employees. So, in these circumstances, closure of one department does not attract the provisions of Section 25-O of the Act. No permission of the Government was required for closing the said department.

The other contention of the counsel for the petitioner is that the provisions of Chapter V-B shall be attracted and not that of Chapter V-A. On careful consideration, I find that the second submission also does not cut ice before me. No material has been brought on the file to attract the provisions of Chapter V-B of the Act.

The submission made by the counsel for the petitioner is that the provisions of Section 25-G have been violated, inasmuch as the services of Nirmal Singh and Harbans Singh who joined the service after petitioner Gurbax Singh were not terminated. That submission also cannot be accepted. It is settled law that a party who claims relief has to prove his case. The respondent has taken categoric stand that Nirmal Singh and Harbans Singh were working on a different project than that of the petitioner. There is nothing on the file that Nirmal Singh and Harbans Singh were working on the same project as that of the petitioner.

So far as submission made by the counsel for the petitioner that in view of Section 25-N, three months' notice was required to be given and on that count, termination of services of Gurbax Singh petitioner is bad, that submission is also without any substance. As per appointment letter, notice of 10 days was required to be given to the petitioner and the petitioner has been paid salary of one month. As discussed above, the provisions of

Chapter V-B are not applicable and the provisions of Chapter V-A are attracted. As such the provisions of Section 25-N are not attracted in the present.

So far as the submission made by the counsel for the petitioner to the effect that order passed in Civil Writ Petition No.4416 of 1988 dated 15.12.1988 has not been complied with is concerned, that submission is also without any substance. According to the respondent, Gurbax Singh petitioner along with other workmen were allowed to join duty. Order has been passed in view of observations made in the order dated 15.12.1988 to the effect that respondent was at liberty to pass fresh order in accordance with law. Fresh order has been passed for termination by keeping in view all the circumstances. Since the project on which Gurbax Singh petitioner was working has been completed, as such there was no occasion for the respondent to continue with the services of the employees working on that project. There is nothing on the file that employees working on the said project as detailed in Annexure P1 have been discriminated. Section 25F (a) has been fully complied with and salary for one month in lieu of notice has been admittedly paid to Gurbax Singh, petitioner.

In view of above discussion, the petition is without any merit and the same stands dismissed.

December 5 ,2007. (K. C. Puri)
Jaggi Judge